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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/685,850	10/10/2000	Marjorie Mossman Peffly	8287	4193

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EXAMINER
BENNETT, RACHEL M

ART UNIT	PAPER NUMBER
1615	11

DATE MAILED: 01/09/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/685,850	Applicant(s) PEFFLY ET AL.	
	Examiner Rachel M. Bennett	Art Unit 1615	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12/28/01 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 28 December 2001. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☐ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Rejection under 103(a) over Yoshihara et al.

The Declaration of Marjorie Mossman Peffly filed under 37 CFR 1.132 has been entered and considered but does not overcome the rejection of claims 1-12, 15-18, 21-32, 35-38, 53-60 based on Yoshihara et al. as set forth in the last action because: it is the position the examiner it would have been obvious to one of ordinary skill in the art at the time the invention was made to "add other ordinary components", (as suggested by Yoshihara) such as humectants, specifically glycerol or dipropylene glycol to the scalp treatment in order to provide moisturization. Humectants, by definition, are substances that promote retention of moisture. Therefore, by adding humectants, as suggested by Yoshihara, moisturization of the scalp would be obtained.

Rejection under 103(a) over Kashibuchi et al.

Applicants argue Kashibuchi et al. does not teach a volatile liquid in combination with a humectant and skin active agent and Kashibuchi teaches away from the use of large amount of humectants. However, the examiner refers to the teaching of Kashibuchi at col. 6 lines 10-16, 48-57 where other ingredients such as alcohols may be incorporated into the scalp moisturizer. Also, at col. 6 lines 45-47, humectants may also be incorporated into the scalp moisturizer. Applicant is claiming the amount of humectant be from about .01% to 20%, more preferably from about 1% to about 10%. Therefore, it would have been obvious to one of ordinary skill in this art at the time of invention to use a lower amount of humectant, as desired by the reference and applicant, in order to achieve the desired results claimed by applicant.

Rejection under 103 (a) over Yoshihara et al. in view of McKay (and in further view of Kellett)

Applicants argue the reference does not teach the fluid be applied to the scalp but the hair. It is the position of the examiner that the composition of Yoshihara, as being applied to hair would simultaneously be applied to the scalp. Therefore it would have been obvious to one of ordinary skill in this art to use the composition taught by Yosihara in the applicator taught by McKay because of the expectation of delivering the composition to the hair and the scalp.
Applicants also argue the comb of McKay would unduly affect hair cosmetics. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the applicator not unduly affecting hair cosmetics) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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